

COMPLIANCE BOARD OPINION NO. 03-13

July 24, 2003

Ms. Charlotte A. Price

The Open Meetings Compliance Board has considered your complaint that the Town Council of Capitol Heights violated the Open Meetings Act by failing to give the required notice of a meeting that was held on March 31, 2003, and by failing to open the meeting to all who might have wanted to attend. Based on the representation that a quorum of Town Council members did not convene, the Compliance Board finds that the Act was not violated with respect to the conduct of the meeting. The Board is unable to state an opinion whether the Act's notice requirement was satisfied.

I

Complaint, Response, and Additional Response

The complaint alleged that on March 31, 2003, the Town Council of Capitol Heights held a special meeting, called by Councilman Springs, "to discuss actions that had been initiated by Mayor Joyce Nixon." The complaint alleged that "no notice of this meeting was given to the public. There was no mention in a newspaper or posted notice at Town Hall or any other prominent place within the Town." You indicated that you had learned of the meeting directly from Councilman Springs. The complaint continued: "Upon arriving at the Town Hall, the door was locked. Councilman Springs opened the door and announced that there was no meeting. I reminded him that he had told me that there was a meeting. He went to check with other council members inside, returned, and admitted myself, another resident, and a reporter for the Gazette newspaper. I was also informed that another resident was refused admittance prior to my arrival. No other residents attended. Surely, other residents would have attended if proper notice had been given."

By letter dated April 7, 2003, the Compliance Board sent a copy of this complaint to Mayor Nixon, with a copy to the town's attorney. By letter of May 15, 2003, Mayor Nixon indicated that she had provided a copy of the Compliance Board's letter to Councilman Springs, who had called the March 31 meeting. Mayor Nixon's letter continued: "I have asked Councilmember Springs and the other Council attendees to develop the response for submission to your office since I was unable to attend the meeting." Mayor Nixon also requested an extension of the

deadline for the Town's response to June 15. The Compliance Board granted this request for an extension.

By letter dated June 13, 2003, Mayor Nixon stated that she had "sought, but had been unsuccessful in obtaining the rationale or justification that demonstrates the need and urgency for the meeting held on March 31, 2003." She pointed out that she herself had not attended the meeting. "Two council members, responding to my request for a reason for the council's action, have indicated that they were also notified late and as a result were unable to attend as well."¹ Mayor Nixon continued: "The council members requesting the meeting and those in attendance in the meeting have failed to respond to my request for the rationale for [their] actions." Under the circumstances, Mayor Nixon stated that she was "unable to respond to your request, other than to state that the meeting was action taken by council members acting on their own."

At the request of the Compliance Board, however, Councilman Springs provided a separate response. By letter of July 7, 2003, he indicated that the March 31 "Special Meeting" was called as a result of his motion at a March 25 Council meeting, which the Council passed.² According to Mr. Springs, appropriate notice of the meeting was given. On March 31, however, a quorum of council members was not present. Residents who attended and a newspaper reporter were "allowed to engage in an open discussion with the council members who were present."

II

Discussion

A. Notice

When a meeting subject to the Act is scheduled, a public body is required to give the public notice of it. §10-506.³ Because a public body may not assume that a quorum will fail to materialize, deficiencies in notice are not excused even if, in the event, no quorum convenes. *See* Compliance Board Opinion No. 01-4 (February 22, 2001), slip op. at 3-4.

¹ Letters from Councilwoman Carroll and Councilman Miller to this effect were attached to Mayor Nixon's letter.

² The Charter of Capitol Heights apparently allows special meetings to be called by the Mayor or by a majority of Council members.

³ All statutory references in this opinion are to the State Government Article, Maryland Code.

The complaint asserted that no public notice was given. Councilman Spring's response asserted without elaboration that appropriate notice was given.⁴ Lacking this information, we cannot resolve the allegations in the complaint about lack of notice. *See* §10-502.5(f)(2).

B. Conduct of March 31 Session

Based on Councilman Springs' representation that a quorum was not present on March 31, we conclude that no "meeting" took place, within the meaning of that term in the Open Meetings Act. §10-502(g) ("Meet' means to convene a quorum of a public body for the consideration or transaction of public business."). Consequently, the Act did not apply to the March 31 session. Even if, as alleged in the complaint, the meeting was not fully open to members of the public, no violation of the Act occurred.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb

Editor's Note:

This opinion has been vacated by 4 *Official Opinions of the Compliance Board* 6 (January 8, 2004).

⁴ Councilman Springs provided a copy of a notice addressed to the Mayor and Council Members. It is unclear whether this document was posted or otherwise made available to the public. The presence of the reporter suggests that some form of notice was provided.